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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,827	12/24/2003	Paul William Martens	2625-114	1144
6449	7590	03/21/2007		
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			EXAMINER HUH, BENJAMIN	
			ART UNIT	PAPER NUMBER
			3767	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	03/21/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 03/21/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

# Office Action Summary

Application No.

10/743,827

Applicant(s)

MARTENS ET AL.

Examiner

Benjamin Huh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4-6, 8-12, 14-16, 18-19, 21-23, 26, and 31-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Hickerson et al (US Pub. No. 2003/0004470A1).

The Hickerson et al reference discloses in figures 1-2 a fluid warming and infusion system for infusing a warm fluid into a patient comprising a device 1 configured to transfer heat to a fluid, to warm the fluid; and a tube 25 having insulation integrated into the tube, wherein an insulating layer can be foam or air see para [0031], the tube being configured to be disposed external to the patient and to transport the warmed fluid to the patient to prevent the warmed fluid from losing a substantial amount of heat as the fluid flows through the tube, wherein the tube is configured to attach to a patient insertion device disposed in the patient via element 28 which is a luer, also see abstract, para [0008]-[0011] & [0018]-[0036].

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 13, & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickerson et al (US Pub. No. 2003/0004470A1) in view of Dobak, III (US Patent No. 6042559). Now even though Hickerson does not explicitly disclose the annular insulating gap to be evacuated and sealed so that a vacuum is created in the annular insulating gap attention is directed to Dobak. The Maruschak reference teaches the use of a insulated tube which utilizes an annular gap that is sealed and evacuated to provide an insulation barrier, see col. 3 lines 9-23. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the device of Hickerson with the teachings of Dobak in order to provide an active or passive vacuum for insulation to further insulate the fluid lumen.

Claims 7, 17, 24-25, 27, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickerson et al (US Pub. No. 2003/0004470A1) in view of Lenker (US Patent No. 6746439 B2) or Verkaart (US Patent No. 5063994). Now even though Hickerson does not explicitly disclose that there are only two partitions and that the partitions are spaced about 180 degrees apart from each other attention is directed to Lenker or Verkaart. The Lenker and Verkaart references both teach the use of two

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partitions in insulated tubes, see Lenker figures 4 & 7 and Verkaart figure 4. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to modify the device of Hickerson with the teachings of Lenker or Verkaart in order to reinforce the tube by creating partitions and to prevent movement of the inner tube within the outer tube.

Claims 28 & 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickerson et al (US Pub. No. 2003/0004470A1) in view of Dobak, III (US Patent No. 6042559). Now even though Hickerson does not explicitly disclose the single wall configuration comprising a plurality of insulating cavities within attention is directed to Dobak. The Dobak reference teaches the use of an insulating tube with a single wall configuration comprising a plurality of insulating cavities in figure 6 also see col. 6 lines 35- col. 7 line 4. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to modify the device of Hickerson with the teachings of Dobak in order to provide a multiple lumen passive vacuum for constant insulation of the inner lumen.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Huh whose telephone number is 571-272-8208. The examiner can normally be reached on M-F: 9:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BHH

BHH

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

*Kevin C. Sirmons*